

REMARKS

The present Amendment is in response to the Examiner's Office Action mailed May 9, 2007. Claim 9 is amended. Claims 1-3 and 5-14 are now pending in view of the above amendments. Reconsideration of the application is respectfully requested in view of the above amendments to the claims and the following remarks. For the Examiner's convenience and reference, Applicant's remarks are presented in the order in which the corresponding issues were raised in the Office Action.

Please note that the following remarks are not intended to be an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed below are presented solely by way of example to illustrate some of the differences between the claimed invention and the cited references. In addition, Applicants request that the Examiner carefully review any references discussed below to ensure that Applicants understanding and discussion of the references, if any, is consistent with the Examiner's understanding.

I. PRIOR ART REJECTIONS

A. Rejection Under 35 U.S.C. § 103

The Examiner rejects claims 1-3, 5 and 7-8 under 35 U.S.C. § 103 as being unpatentable over *Kim et al.* (U.S. Patent No. 6,909,848) in view of *Johansen et al.* (U.S. Patent No. 6,631,144) and further in view of *Heston et al.* (U.S. Patent No. 6,956,847). The Examiner rejects claim 6 under 35 U.S.C. § 103 as being unpatentable over *Kim et al.* (U.S. Patent No. 6,909,848) in view of *Johansen et al.* (U.S. Patent No. 6,631,144) and further in view of *Heston et al.* (U.S. Patent No. 6,956,847) and further in view of *Liou et al.* (U.S. Patent Application No. 2002/0060824). The Examiner rejects claims 9-10 and 12-13 under 35 U.S.C. § 103 as being unpatentable over *Johansen et al.* (U.S. Patent No. 6,631,144) in view of *Kato et al.* (U.S. Publication No. 2002/0021468). The Examiner rejects claim 11 under 35 U.S.C. § 103 as being unpatentable over *Johansen et al.* (U.S. Patent No. 6,631,144) in view of *Kato et al.* (U.S. Publication No. 2002/0021468) and further in view of *Liou et al.* (U.S. Patent Application No. 2002/0060824). The Examiner rejects claim 14 under 35 U.S.C. § 103 as being unpatentable

over *Johansen et al.* (U.S. Patent No. 6,631,144) in view of *Kato et al.* (U.S. Publication No. 2002/0021468) and further in view of *Heston et al.* (U.S. Patent No. 6,956,847).

Regarding claims 1 and 14, Applicants traverse the Examiner's rejection for obviousness on the grounds that *Heston* is not within the scope of what may be considered as "prior art" relative to the present invention.

Heston was filed on June 19, 2003. This application was filed October 30, 2004 but claims priority as a continuation-in-part to U.S. Patent Application SN 10/420,027, entitled "Transceiver Module and Integrated Circuit With Dual Eye Openers," filed on April 17, 2003 and this application also claims the benefit of U.S. Provisional Patent Application SN 60/422,806 entitle "Automatic Selection of Data Rate for Transceivers and Transponders," filed on October 30, 2002. Claims 1 and 14 of this application are supported by the teachings of the applications to which this application claims priority. For example, see paragraphs [009] – [0011] and Figures 2 and 3 of U.S. Provisional Patent Application SN 60,422,802. Therefore, claims 1 and 14 are entitled to an earlier filing date than *Heston*. As such, *Heston* cannot be considered prior art with regard to claims 1 and 14. Therefore, the Applicant respectfully requests that the rejection of claims 1 and 14 be withdrawn.

Claims 2, 3, and 5-8 depend from claim 1. If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Therefore, the Applicant respectfully requests that the rejections of claims 2, 3, and 5-8 be withdrawn at least for the same reasons as claim 1.

Regarding claim 9, Applicants traverse the Examiner's rejection for obviousness on the grounds that the references – either individually or in combination – fail to teach or suggest each and every element of the rejected claims. Claim 9 has been amended to include the element, "wherein when each data rate in the plurality of automatically selectable data rates have been set but the loss of lock signal remains asserted the receive circuit is configured to cause the data stream to be passed through the signal modification integrated circuit without modification...." (Emphasis added). The Applicants respectfully traverse the rejection of claim 9 as neither *Johanson* nor *Kato* teach this element of claim 9. Therefore, the Applicant respectfully requests that the rejection of claim 9 be withdrawn

Claims 10-13 depend from claim 9. As such, the Applicants respectfully request that the rejections of claims 10-13 be withdrawn for at least the same reasons as claim 9.

CONCLUSION

In view of the foregoing, Applicants believe the claims as amended are in allowable form. In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, or which may be overcome by an Examiner's Amendment, the Examiner is requested to contact the undersigned attorney.

Dated this 7th day of September, 2007.

Respectfully submitted,

/David A. Jones/ Reg. 50,004

DAVID A. JONES

Registration No. 50,004

Attorney for Applicant

Customer No. 022913

Telephone: (801) 533-9800

W:\15436\247.11.1\ML0000006013\001.doc